



LEGAL UPDATE · RESOURCES · USE OF FORCE

Excessive Force by Tight Handcuffs

By **DLG Learning Center**

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DAIGLE LAW GROUP

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In past articles we have discussed the proper use of handcuffs and the importance of checking cuffs for tightness and double locking the cuffs to avoid tightening. Some of you may recall the 2004 case out of San Diego where the surgeon was awarded a multi-million-dollar verdict by a jury, based in part, on a finding that officers applied the handcuffs too tightly causing permanent nerve damage. Another California case found a dentist receiving a sizeable award after officers improperly handcuffed him following a dispute at a car body shop.

Today's case, *McGrew vs. Duncan*^[1], doesn't involve a high-income doctor or dentist but you can sometimes get a good idea of how a case is going to go based on the opening sentences of the opinion. In this case, the 6th Circuit describes Ms. McGrew as "busily preparing the holiday dinner on the eve of Thanksgiving when masked officers entered her home". This case looks at a number of issues – handcuffs applied too tightly, officer decorum during the execution of a search warrant and proper documentation of evidence seized during the search. Let's take a look at the facts in this case and what the court had to say about them.

FACTS

On Thanksgiving eve Katrina McGrew was preparing Thanksgiving dinner when she heard a knock on the door and entered the living room to find a group of masked Detroit police officers standing there. The officers were wearing tactical-style uniforms and balaclavas so that only their eyes were visible to the defendant. An officer threw McGrew to the floor and handcuffed her. When the plaintiff complained that the handcuffs were too tight the officer allegedly replied, "Shut up bitch, you shouldn't be so fat". Several minutes later McGrew reiterated her complaint that the handcuffs were too tight, and the same officer allegedly replied, "If you don't shut your fucking mouth, I can blow your head off and nothing can be done".

When officers finished their search, they completed the search warrant return listing a bag of marijuana and a pistol as the two items seized. The plaintiff alleges that officers also took a pair of diamond earrings, another gun, a Samsung tablet and a Samsung cell phone. These items were not recorded in the police documents.

Several days after the search McGrew went to the hospital where she was diagnosed with bruising on both wrists and a muscle strain in her chest. McGrew filed a Section 1983 claim as well as state claims

against the officers and the Detroit Police Department claiming excessive force, intentional infliction of emotional distress, assault, battery and conversion. Conversion is a state tort claim alleging the officers improperly took her property and failed to return it.

The defendant officers filed a motion for summary judgment claiming they were entitled to qualified immunity on the federal claims and governmental immunity on the state claims. The trial court granted the motion with respect to the intentional infliction of emotional distress claim but denied the defendants' motions on the other claims. The defendants then brought this appeal.

6th Circuit Findings

On appeal the defendant officers argue that the plaintiff cannot succeed on her claim of excessive force. According to the officers, 6th Circuit precedence requires that the plaintiff prove three factors:

- That she complained the handcuffs were too tight;
- The officers ignored her complaint; and
- The handcuffs caused an injury.

The defendants did not dispute that McGrew complained the handcuffs were too tight nor do they dispute that they ignored her complaints. Rather, the officers claim that bruising alone does not constitute an injury and, therefore “there was no clear evidence of a physical injury”. The appellate court made short work of the defendants' argument, citing several cases where the 6th Circuit had found that “bruising was enough” to create a genuine issue of fact as to whether the plaintiff had sustained an injury.

The court next tackled the state law battery claim. Under Michigan's Governmental Immunity law officers are shielded from liability when three factors are met:

- The officers are acting within the scope of their employment and authority;
- They acted in good faith; and
- Their acts were discretionary rather than ministerial.

The court only addressed this state claim as it related to the handcuffing. Noting the two statements allegedly made by the officer and described earlier, the court determined that “it is difficult for us to imagine a clearer example of bad faith”.

The 6th Circuit failed to address the remaining issues raised by the defendants, affirmed the trial court's denial of qualified and governmental immunity and sent the case back to the trial court.

WRAP UP

I still run across officers who tell me their agency requires all suspects to be handcuffed – end of story. Whether you have drafted your own policy on handcuffing or use the Daigle Law Group model policy I will bet your agency policy says a number of things about handcuffing:

- There are exceptions to handcuffing in back for suspects suffering from a medical or physical condition;
- The policy requires officers to double lock the cuffs and check for tightness; and
- Officers need to check the cuffs if the suspect claims they are too tight.

I hope you picked up on the court's review of the officer's statements and how those statements skewed the officer's ability to be protected by governmental immunity. Just remember that what you say can come back to haunt you.

1. McGrew v Duncan, No 2:16-cv-10978 (6th Cir 2019) [↑](#)

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